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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 19, 2000

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. PUE990619

ROBERT A. WINNEY,

d/b/a THE WATERWORKS COMPANY
OF FRANKLIN COUNTY,

Defendant

FINAL ORDER AND JUDGMENT

Before the Commission is the Report of Michael D. Thomas, Hearing Examiner (Report) filed in this proceeding on March 3, 2000. Based on the record developed at a public hearing held January 11, 2000, Examiner Thomas found that Robert A. Winney d/b/a The Waterworks Company of Franklin County ("The Waterworks Company" or "Company") had violated several provisions of the Code of Virginia and had failed to comply with the Commission's Orders. He recommended that the Commission impose monetary penalties. (Report at 18)

On March 17, 2000, the Commission Staff addressed developments subsequent to the January hearing in its comments. The Staff noted that the Company had failed to file a report concerning refunds required by the Dismissal Order of January 19, 2000, in Application of Robert A. Winney d/b/a The

Waterworks Company of Franklin County, Case No. PUE990703. The Staff also requested the Commission to consider a Notice of Violation issued on March 8, 2000, to the Company by the Department of Health, Office of Water Programs. Also on April 4, 2000, a Commission Staff Motion for Judicial Notice was filed with the Clerk and a copy served on The Waterworks Company. In this motion, the Staff moved that the Commission take judicial notice of the State Board of Health Special Order Issued to Robert A. Winney, d/b/a The Waterworks Company of Franklin County, Order Number 3-2000-(03) (March 30, 2000).

The Commission will deny the motion of the Staff, regarding what has occurred since the hearing on January 11, 2000. We will not consider the matters raised in these motions in our consideration of this case.

The Waterworks Company has likewise made two filings. On March 27, 2000, the Clerk received a letter dated March 20, 2000, signed by Robert Winney. The Clerk also received on March 29, 2000, a filing headed "Subject: Rebuttal of Michael Thomas's allegations" dated March 22, 2000, and signed by Robert Winney.

Although both pieces of correspondence from the Company were filed after the date set by Examiner Thomas for filing (Report at 18), the Commission will accept the documents filed with the Clerk as comments on the Report. The Commission must

note, however, that both documents include what appear to be allegations of fact. The record establishes that Robert A. Winney was present at the hearing on January 11, 2000, but he declined to take the stand and offer under oath any testimony or other evidence. While we will consider the relevant arguments made by Mr. Winney, we cannot accord many of the statements with the same weight that the Commission would accord sworn testimony.

The Commission has reviewed the Report and record filed in this proceeding. The Report reviews the record as it relates to the three allegations concerning adequacy and reliability of service and the three allegations concerning improper billing and failure to refund over-collections. The Report is complete and thorough, and the Commission will adopt the Examiner's findings as stated in the Report, at 18.

With regard to sanctions for these violations, Examiner Thomas recommended entry of judgment for penalties totaling \$24,300 as set out in his recommendations (1) through (4) in the Report, at 18. The record supports imposition of these penalties for violation of various provisions of the Code of Virginia and of our orders. Accordingly, we will adopt these recommendations and enter judgment in the amount of \$24,300 plus interest as provided by law.

The Examiner has also recommended that the Commission proceed with an action to appoint a receiver for the Company. (Report at 17) In support of this recommendation, the Examiner quoted § 56-265.13:6.1 of the Code of Virginia, which empowers the Commission to appoint a receiver for a small water or sewer utility. He pointed to the record, which established, in his view, gross mismanagement.

The Commission has considered the record, and we have adopted Examiner Thomas's recommendations on finding violations of statute and our orders. As provided by § 56-265.13:6.1 of the Code, however, the Commission cannot, on its own motion, appoint a receiver. The Commission can only act upon receipt of petition from the Staff, the Board of Health, or two-thirds of the customers. In light of the Report, the Commission Staff should promptly consider whether the circumstances justify petitioning for appointment of a receiver as provided by § 56-265.13:6.1.

In conclusion, the Commission has considered the report and the record developed in this proceeding and it adopts the findings that follow:

(1) The Company violated § 56-265.14:4 of the Code of Virginia by failing to furnish adequate service on at least three occasions;

(2) The Company has failed or refused to obey the Commission's Final Order in Case No. PUE980811, requiring the Company to make certain refunds and to file the prescribed report with the Clerk;

(3) The Company violated § 56-265.13:5 of the Code of Virginia by failing to provide customers notice of a proposed increase in charges for the third quarter of 1999; and

(4) The Company has failed or refused to obey the Commission's Dismissal Order in Case No. PUE990613, requiring the Company to make certain refunds and to file the prescribed report with the Clerk. Accordingly,

IT IS ORDERED THAT:

(1) As provided by § 12.1-33 of the Code of Virginia and § 56-265.6 of the Code of Virginia, penalties in the amount of \$24,300 be imposed on Robert A. Winney, Social Security No. 123-32-9127, d/b/a The Waterworks Company of Franklin County and that judgment in that amount be entered in favor of the Commonwealth against Robert A. Winney, 430 Windtree Drive, Moneta, Virginia 24121-3106.

(2) The judgment shall bear interest at the judgment rate of interest fixed by law from the date of this Final Order and Judgment, provided that interest will be waived if the judgment is paid in full on or before May 22, 2000, to the Clerk of the

State Corporation Commission, P.O. Box 1197, Richmond, Virginia
23218-1197.

(3) This case be dismissed from the Commission's docket.